

**General Information Letter:** Application to Iowa resident working in Illinois.

February 13, 1998

Dear:

This is in response to your letter dated February 6, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

I am requesting a general information letter regarding the following situation.

**QUESTION:**

Does an individual have to pay Illinois income tax and does an Illinois company have to withhold Illinois income tax, under the following set of circumstances?

**FACTS:**

An Iowa resident will begin working for an Illinois Corporation, located in Illinois. He currently lives in Iowa with his wife and children. All of his social and family ties are in Iowa and will remain in Iowa. For an indefinite period of time, he will fly to the company location in Illinois each Monday morning where he will be working. He will spend Monday through Friday in Illinois and will rent an apartment in Illinois. He will fly home every Friday to be with his family.

Our question relates to definition of "Resident" in the Illinois tax statutes. While we believe our client is domiciled in Iowa, it is uncertain if he will be considered an Illinois resident because of the time he spends in Illinois each week. The Illinois statute also considers individuals who are in Illinois for an indefinite period of time to also be residents of Illinois. Under the circumstances as shown above, is the individual a resident of Illinois?

Finally, if the individual is considered an Iowa resident, will he come under the Illinois-Iowa reciprocity agreement, and thus not be subject to Illinois income tax?

Your consideration is appreciated.

### **Department Analysis**

The definition of "resident" is contained in Section 1501(a)(20) of the Illinois Income Tax Act ("IITA"), which states:

(20) **Resident.** The term "resident" means:

(A) an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year;

This definition is fleshed out by regulations found at 86 Illinois Administrative Code Chapter 1, §100.3020 (copy enclosed). While the regulations give a great deal of guidance, they can only help the taxpayer to make a decision about residency. That is, as the determination of residency is fact-intensive--and greatly dependent on the taxpayer's intent--the rules can only do so much. The decision as to residency is your client's, and we cannot rule one way or another in a General Information Letter as to his status. If your client is an Iowa resident, he will not be subject to Illinois income tax (and his employer will have no Illinois income tax withholding liability) pursuant to the reciprocal agreement in effect between Iowa and Illinois.

I hope that this has been helpful to you and your client. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian  
Staff Attorney (Income Tax)